

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES H. GORBEY, JR.,
Administrator of the Estate of
Marissa Rose Fishman, Deceased,

Plaintiff,

v.

C.A. No. 05-211 KAJ

RICHARD LONGWILL,
BARBARA LONGWILL,
ASHLAND CONSTRUCTION
COMPANY, INC., VINCENT RIZZO
CONSTRUCTION CO., INC.,
d/b/a Ashland Construction Co., Inc.,
and VINCENT RIZZO,

Defendants.

JURY TRIAL DEMANDED

**DEFENDANTS' ASHLAND CONSTRUCTION COMPANY, INC.
VINCENT RIZZO CONSTRUCTION CO., INC.
d/b/a ASHLAND CONSTRUCTION CO., INC.
& VINCENT RIZZO, ANSWER TO AMENDED CIVIL ACTION MASTER COMPLAINT**

1. This paragraph states a legal conclusion to which no response is required. To the extent a response is required, answering defendants deny that the amount in controversy exceeds \$75,000.

2. Admitted that the Amended Civil Action Master Complaint appears to be a survival action pursuant to 10 Del.C. § 3704. Denied that the Amended Civil Action Master Complaint sets forth a wrongful death action pursuant to 10 Del.C. § 3724.

3. Admitted upon information and belief.

4. Admitted upon information and belief.

5. Admitted.

6. This allegation is not directed toward answering defendants and therefore no response is required.

7. Admitted.

8. No response required.

9. Admitted.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Answering defendants lack sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

15. Admitted upon information and belief.

16. Denied.

17. No response required of answering defendants.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Answering defendants lack sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

25. Answering defendants lack sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

26. Answering defendants lack sufficient information to admit or deny the allegations of this paragraph and they are therefore deemed denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

First Affirmative Defense

The Amended Complaint fails to state a claim against answering defendants upon which relief can be granted.

Second Affirmative Defense

The Amended Complaint has been filed improperly as plaintiff's attorneys are attempting to represent parties with potential wrongful death claims whom they do not represent.

Third Affirmative Defense

Some or all of the claims attempted to be asserted are barred by the applicable statutes of limitations.

Fourth Affirmative Defense

Plaintiff's injuries were caused by a superseding, intervening cause -- the unforeseeable negligent conduct of third parties over whom answering defendants exercised no control.

Fifth Affirmative Defense

Answering defendants owed no duty to plaintiff's decedent.

WHEREFORE, Answering Defendants demand that the Amended Civil Action Master Complaint be dismissed with prejudice and costs assessed against plaintiff.

**CROSSCLAIMS FOR INDEMNIFICATION/CONTRIBUTION AGAINST
RICHARD LONGWILL AND BARBARA LONGWILL**

1. Answering defendants deny that they are liable to the plaintiff in any respect. However, in the event that the answering defendants are held liable to the plaintiff, then answering defendants crossclaim against the co-defendants, whose negligence, recklessness and/or intentional conduct was the primary cause of the damages sustained by the plaintiff and claims that the answering defendants, if liable at all, are only secondarily liable. The answering defendants, therefore, are entitled to indemnification from the co-defendants.

2. In the event that answering defendants are held primarily liable to the plaintiff, then the alleged wrongful acts of the co-defendants are a contributing cause of the damages sustained by the plaintiff and the answering defendants are entitled to contribution in any amount which it may be required to pay to the plaintiff as a result of the co-defendants' wrongful acts, based on the relative degrees of fault determined pursuant to the provisions of the Delaware Uniform Contribution Among Tortfeasors Law, 10 Del . C. § 6301 to § 6308.

WHEREFORE, answering defendants move that the plaintiff's cause of action be dismissed against them, or in the alternative, that judgment be entered in answering defendants' favor against the co-defendants, plus interest, costs and any other relief this Court deems appropriate.

MURPHY & LANDON

/s/ Roger D. Landon

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Attorney for Defendants

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CERTIFICATE OF SERVICE

I, Roger D. Landon, Esq., do hereby certify that on this 29th day of May, 2007, two copies of the foregoing **ANSWER OF DEFENDANTS ASHLAND CONSTRUCTION COMPANY, INC., VINCENT RIZZO CONSTRUCTION CO., INC., d/b/a ASHLAND CONSTRUCTION CO., INC. AND VINCENT RIZZO** were delivered *via* e-file and in the manner indicated to the following individual(s):

Via First Class Mail

Jonathan Cohen, Esq.
Kline & Specter
The Nineteenth Floor
1525 Locust Street
Philadelphia, PA 19102

Via First Class Mail

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Via Hand Delivery

Kevin J. Connors, Esq.
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Via First Class Mail

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